

Civil No. 1:18-CV-00007-MR-DLH

Defendants.

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) **DEFENDANT TRANS UNION**
) **LLC’S REPLY TO PLAINTIFF’S**
) **MEMORANDUM IN OPPOSITION**
) **TO ITS MOTION TO DISMISS FOR**
) **FAILURE TO STATE A CLAIM**
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file disclosure” to an individual who failed to comply with the condition precedent of § 1681h(a)(1) to verify identity and address.

In her opposition Plaintiff discussed providing her social security card and two different state driver’s licenses to Trans Union. A social security card does not contain a current mailing address and is not an acceptable document to verify current address. Likewise, a driver’s license with an address different from the address where the consumer has requested their disclosure to be mailed is unacceptable to verify current mailing address. Thus, providing her old Georgia driver’s license was inconsequential. *See* Opposition ¶4. The unsupported assertion that she provided a “valid North Carolina Driver’s license” does not contain any factual information about what address appears on the license or whether a legible copy of the license was submitted. *See* Opposition ¶2. The lack of factual allegations in the Complaint that Plaintiff satisfied Trans Union’s request for proof of address in accordance with § 1681h(a)(1) is a fatal flaw.

II. Plaintiff failed to state a claim and amending would be futile

The procedure to amend a pleading is set forth in FED. R. CIV. P. Rule 15. In her Memorandum in Opposition, Plaintiff buried a request to amend her Complaint. Trans Union believes the proposed amendment is futile because plaintiff failed to satisfy the condition precedent to receive her consumer disclosure. *See Dowell v. County of Contra Cost*, No. 12-cv-5743-JCS, 2013 U.S. Dist. LEXIS 71300 *13 (N.D. Cal. May 20, 2013) (rejecting request for leave to amend embedded in Opposition to Motion to Dismiss); *Foman v. Davis*, 371 U.S. 178, 182 (1962) (identifying futility as a reason to deny leave to amend). There can be no violation of § 1681g because Plaintiff never complied with § 1681h(a)(1).

Trans Union provided more than one way for Plaintiff to verify her address and identity including online. Instead, Plaintiff rushed to the courthouse instead of following the instructions for her to obtain a copy of her information held by Trans Union.

Plaintiff raises a red herring argument when she complains that the letter from Trans Union only advised her how to obtain her credit report and not the requested consumer disclosure. Plaintiff misunderstands the difference between a “consumer report” and a consumer disclosure. *See e.g. Pettway v. Equifax Info. Servs., LLC*, 2010 U.S. Dist. LEXIS 13800, at *22 (S.D. Ala. Feb. 12, 2010). “Consumer reports” are generated by a CRA and delivered to a third party for use in deciding whether the consumer is eligible for credit or for other purposes. *Id.* (citing 15 U.S.C. § 1681a(d)). In contrast, a “consumer disclosure” or “consumer file” is a CRA’s file that is provided to the consumer, not to third parties, that contains information about the consumer recorded and retained by the CRA. *Id.* (citations omitted). In other words, there cannot be a consumer report without delivery to a third party.

IV. CONCLUSION

For the foregoing reasons, Trans Union respectfully requests that Trans Union’s Motion to Dismiss be granted and Plaintiffs’ Complaint is dismissed in its entirety and all claims against Trans Union be dismissed with prejudice.

YOUNG MOORE AND HENDERSON, P.A.

BY: /s/ Kelly S. Brown

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CERTIFICATE OF SERVICE

This is to certify that on March 2, 2018, a true and correct copy of the above and foregoing document has been electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

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